

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

17-P-1604

COMMONWEALTH

vs.

TATYANA R. YABLONOVSKAYA.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Following a bench trial, the defendant, Tatyana R. Yablonovskaya, was convicted of assault, see G. L. c. 265, § 13A (a), and disorderly conduct, see G. L. c. 272, § 53. On appeal, she argues the evidence was insufficient to permit the judge to find beyond a reasonable doubt that she had the necessary mental state for these offenses where she presented evidence that she suffered from posttraumatic stress disorder (PTSD) and depression.¹ We affirm.

Viewing the evidence in the light most favorable to the Commonwealth, Commonwealth v. Latimore, 378 Mass. 671, 676-677

¹ The defendant also argues, with a preface pursuant to Commonwealth v. Moffett, 383 Mass. 201, 208 (1981), that she had a meritorious self-defense claim. Our review of the record, however, reveals that there was no rational view of the evidence that would support the defense of self-defense. See Commonwealth v. Gaynor, 73 Mass. App. Ct. 71, 73 (2008).

(1979), the judge could have found the following facts. The defendant was the owner of a condominium unit where she had lived for approximately fifteen years. At approximately 8:30 A.M. on the morning of June 21, 2016, the defendant entered the condominium association's office and asked Nancy Kamali, the office manager, for a backup key to her unit because she was locked out. The defendant received the key, left to let herself into her unit, and then returned five to ten minutes later to return the key. At that time, the defendant and Kamali had a conversation about an upcoming board of managers election for the condominium association and about whether the defendant wanted to vote by proxy if she could not attend the election. The defendant declined to fill out a proxy form and left the office. At approximately 9 A.M., the defendant returned to the lobby area in the office with a clear mug of water and threw it on the office manager while angrily exclaiming, "Just because you open your mouth."² The defendant then left.

The defendant testified and explained that she suffered from PTSD and depression for which she had received medication and treatment.³ She also testified to past dissatisfaction with

² This was witnessed by the office manager, two maintenance employees, and the property manager, all of whom were taking a morning coffee break. All of these witnesses testified at trial.

³ She testified that a couple of years prior, she stopped taking medication and instead treated these conditions with

the condominium association's management. The defendant described the office manager as being "really impolite" in discussing proxy voting. She denied intentionally throwing water at the office manager and instead claimed that the water only spilled on the carpet.

Discussion. The defendant in this case elected a bench trial where "the legal framework in which facts are to be found is not generally stated with the precision and amplitude of instructions to a jury." Commonwealth v. Colon, 33 Mass. App. Ct. 304, 308 (1992). As the defendant was permitted to testify without limitation on the issue of mental impairment, the only question is whether that testimony rendered the Commonwealth's evidence of intent insufficient as a matter of law. We conclude that it did not.

Evidence of mental impairment (short of lack of criminal responsibility) is not relevant to the determination whether the defendant was able to form the requisite intent for a general intent crime. Commonwealth v. McNulty, 458 Mass. 305, 325 (2010). However, "[d]rugs, intoxication or mental impairment may . . . negate specific intent by evidence that the defendant's ability to appreciate the meaning and consequences

"relaxation, positive imagination, self-analysis, all the relaxation techniques, physical activity and change [of] diet."

of his own conduct has been foreclosed." Commonwealth v. Gassett, 30 Mass. App. Ct. 57, 60 n.1 (1991).

The crime of disorderly conduct does not require that the defendant intend a specific result. See G. L. c. 272, § 53. Assault may be proved under two theories, an attempted battery or threatened battery. See Commonwealth v. Chambers, 57 Mass. App. Ct. 47, 48 (2003). To the extent the assault charge in this case might have been tried under the theory of a threatened battery, mental impairment evidence could have been offered to negate whether the defendant intended her conduct "to place the victim in fear of an imminent battery." See Commonwealth v. Porro, 458 Mass. 526, 530-531 (2010). See also Commonwealth v. Musgrave, 38 Mass. App. Ct. 519, 524 n.6 (1995), S.C., 421 Mass. 610 (1996) (recognizing "a proof requirement for the threatened battery aspect of G. L. c. 265, § 15B, different from the proof of general intent required for conviction of assault and battery by means of a dangerous weapon under G. L. c. 265, § 15A").

The defendant's testimony about PTSD and depression did not go beyond a generalized claim that she had a diagnosis without any specific indication that she did not appreciate the meaning and consequences of her conduct or that she was not acting intentionally at the time she committed the offenses. In particular, the defendant's showing on mental impairment was lacking because she presented no testimony -- expert or

otherwise -- that explained what impact, if any, PTSD or depression had on her behavior.⁴ Cf. Commonwealth v. Ashman, 430 Mass. 736, 738 (2000) (mental impairment defense presented through expert witness who interviewed defendant and opined that defendant's "aggressive act was a direct result of his severe depression at the time"); McNulty, 458 Mass. at 311 (defendant presented two expert witnesses who collectively testified to PTSD and its symptoms, and after conducting psychological tests and multiple interviews, opined that defendant lacked rational control as result of PTSD). In addition, "[t]he judge, as trier of fact, was entitled to reject part or all of the defendant's testimony." Commonwealth v. Coffman, 84 Mass. App. Ct. 33, 38 (2013). The defendant's argument on appeal is less about her capacity to form the requisite intent for the crimes she was charged with than it is about the sufficiency of the Commonwealth's evidence in the face of her claim that it was all an accident. See, e.g., Commonwealth v. Qualls, 440 Mass. 576,

⁴ The closest the defendant came on this point was testifying that she was unable to maintain employment as a result of mental health issues.

582 (2003).

Judgment affirmed.

By the Court (Wolohojian,
Agnes & Desmond, JJ.⁵),

Joseph F. Stanton

Clerk

Entered: October 28, 2019.

⁵ The panelists are listed in order of seniority.